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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,711	08/16/2001	Donald A. Brown	1218.0006	3421

7590 12/15/2003

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EXAMINER

GROSZ, ALEXANDER

ART UNIT PAPER NUMBER

3673

DATE MAILED: 12/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,711

Applicant(s)

BROWN SW

Examiner

GROSZ

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/13/03
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28, 48-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28, 48-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 23
(APPENDIX NOT MAILED WITH PAPER NO 7)
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-52, as best understood rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim1 of U.S. Patent No. 6, 276, 007. Although the conflicting claims are not identical, they are not patentably distinct from each other because the pending claims, a best understood, appear to be merely broader versions of the patented claim.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-52 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. From claims 1 and 15 it appears that the recitation of "at least one extension extending outwardly from said anchor pad" introduces new matter since the specification, as originally filed makes no mention of "an extension" extending from unitary anchor pad 15.

No clear disclosure is seen for the "flush" arrangement of claims 49 and 51. The specification, including figures 5 and 6 seem to team (and show) an arrangement that is not "flush"

No clear disclosure is seen for the "beyond" orientation of claims 48 and 50.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear what exactly is the "extension" of claims 1 and 15; the "beyond" orientation of claims 48 and 50; and the "substantially flush" arrangement of claims 49 and 51.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 10, 11, 15, 16, 24, 25, 48-52 as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al, teaching applicant's basic device, but not the newly claimed "extensions".

It appears that portions of Gardner et al's anchor pad, as discussed in column 4, lines 1-4, has the same dimensions as disclosed by applicant, and portions thereof could be seen as suggesting the use of outwardly extending extensions.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 8, 9, 21, 22, 23 as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al teaching applicant's basic substantially linear lifting aid, but not the single piece polymeric pad-neck, and the ringlike gripping surface, in view of Smith (U.K 874, 724) teaching the use of the above (note grooves 16, fig. 3) with a lift aid.

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to have provided Gardner et al's cane or crutch with a ringlike

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grooved, single piece polymeric pad-neck, because Smith recognizes the desirability of doing so, in order to improve gripping capability. It is noted that rignlike grooves or conventional with bathtub mats, and their use are considered obvious to one ordinarily skilled in the art in view of grooves 16 of Smith.

Claims 12, 26 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al, teaching applicant's basic device, but not the use of a "Y" reinforcement, in view of Booth (note fig. 6) teaching the reinforcing of a patient aid.

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to have reinforced Gardner et al's device, because Booth recognize the desirability of doing so, in order to improve structural strength.

A "Y" shaped reinforcement is considered a mechanical expedient, in view of well known structural engineering principles, as recognized by applicant on page 18, lines 5, 6.

Claims 13, 27 as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al, teaching applicant's basic device, but not the use of a strap, in view of Mehlich (DE 29908393 U1) teaching the use of a strap with a patient aid.

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to have used a strap with Gardner et al's device, because Mehlich recognizes the desirability of using straps, with a similar device, in order to avoid losing or dropping the device.

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Claims 14, 28 as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al, teaching applicant's basic device but not its "adjustability" in view of Semanchick et al (note fig. 3) or Warry (U.K. 141, 590) (note page 1, lines 6-11).

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to have made Gardner et al's device in an adjustable form, because Semanchick et al Warry recognize the desirability of such an adjustability in order to "customize" the device.

Applicant's arguments filed 9/13/03 have been fully considered but they are not persuasive. Contrary to applicant's arguments in the first paragraph of the "remarks" section, Gardner's anchor pad is of the same shape and size as the claimed anchor pad and therefore it is inherently useable in the manner contemplated by applicant. As no method of use claims are pending, applicant's claim limitations and arguments relating to the desired manner of using the claimed device, are given limited patentable weight. Gardner et al's device, as well as Smith's device are clearly "personal lifting aids" useable by an invalid (and a helper) to aid in repositioning the invalid's body, for example in the manner shown in figures 8a and 8b by applicant.

As indicated by the last paragraphs of applicant's "remarks" claims 8, 9, 21-23, 12, 26, 13, 27 14 and 28, "stand or fall" with Gardner et al and Smith, and need not be separately discussed.

Applicant's arguments with respect to claims 1-52 have been considered but are moot in view of the new ground(s) of rejection.

This action is a **final rejection** and is intended to close the prosecution of this application. Applicant's reply under 37 CFR 1.113 to this action is limited either to an appeal to the Board of Patent Appeals and Interferences or to an amendment complying with the requirements set forth below.

If applicant should desire to appeal any rejection made by the examiner, a Notice of Appeal must be filed within the period for reply identifying the rejected claim or claims appealed. The Notice of Appeal must be accompanied by the required appeal fee of \$160.

If applicant should desire to file an amendment, entry of a proposed amendment after final rejection cannot be made as a matter of right unless it merely cancels claims or complies with a formal requirement made earlier. Amendments touching the merits of the application which otherwise might not be proper may be admitted upon a showing a good and sufficient reasons why they are necessary and why they were not presented earlier.

A reply under 37 CFR 1.113 to a final rejection must include the appeal from, or cancellation of, each rejected claim. The filing of an amendment after final rejection, whether or not it is entered, does not stop the running of the statutory period for reply to the final rejection unless the examiner holds the claims to be in condition for allowance. Accordingly, if a Notice of Appeal has not been filed properly within the period for reply, or any extension of this period obtained under either 37 CFR 1.136(a) or (b), the application will become abandoned.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

On 11/17/03, Mr. Brown and I discussed the invention, the claims, and the prior art, as well as options that he might have after the above set forth final rejection, including appeal, filing of continuation applications (including continuation applications on methods of using the lifting aids) and continuation-in-part applications. I indicated that upon the cancellation of the "new matter" added in paper No 9, claims 3-6 and 17-20 if presented in independent condition, would be allowed. I indicated that claim 1, with the limitation of claim 3, need not have a limitation to the palm grip. I also indicated that a new independent claim such as claim 1, with limitations to the very specific anchor pad of figures 4 and 7 could also be allowable.

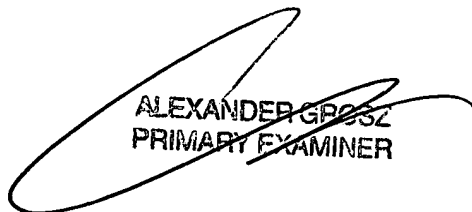
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On 11/20/03, Mr. Thompson faxed in an "informal" reappointment as the attorney for applicant. I indicated that upon the formal filing of the power of attorney, an after final amendment presenting claims 3-6 and 17-20 and a new claim with the limitations of claim 1 and the limitations to the anchor pad having molded raised top rings (15a) on its top surface, and central raised bottom rings (15c), surrounded on its perimeter by a inverted, enlarged ring (15d) about 1/2 inch wide and about 1/8 inch deep, would probably be entered, with such claims allowable, if the claims are exactly as set forth above.

Mr. Thomson indicated that he will consult with applicant and decide on a course of action.

Any inquiry concerning this communication should be directed to Alex Grosz at telephone number (703) 308-2498.

Grosz/vs
December 4, 2003


ALEXANDER GROSZ
PRIMARY EXAMINER